Fluor Daniel, Inc. and United Association of Journeymen & Apprentices of the Plumbing & Pipefitting Industry of the United States of America and Canada, Plumbers & Steamfitters, Local 198, AFL—CIO and International Brotherhood of Electrical Workers, Local 995, AFL—CIO and International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers, & Helpers, AFL—CIO and United Brotherhood of Carpenters and Joiners of America. Cases 15—CA—12544, 15—CA—12666, 15—CA—12723, 15—CA—12852, 15—CA—12936, 15—CA—12938, 28—CA—12750, and 28—CA—13357

January 27, 2009

## ORDER DENYING MOTION FOR RECONSIDERATION<sup>1</sup>

BY CHAIRMAN LIEBMAN AND MEMBER SCHAUMBER

On September 25, 2008, the National Labor Relations Board issued a Decision and Order in this proceeding, granting the General Counsel's, Charging Parties' and Intervenor's requests for special permission to appeal certain rulings made by the administrative law judge at a compliance hearing and denying the appeals on the merits, remanding the proceeding to the judge for further action consistent with its decision.<sup>2</sup> The Board found, inter alia, that the judge did not abuse his discretion by

ruling that *Oil Capitol Sheet Metal*<sup>3</sup> applies to this compliance proceeding and that the discriminatees at issue were union "salts."

On October 21, 2008, the Charging Parties filed a motion for reconsideration of that decision, arguing that (1) the two-member Board did not have statutory jurisdiction to rule on this case; (2) the Board erred in ruling that *Oil Capitol* should be applied in this case; (3) the Board erred in failing to rule that *Oil Capitol* should not be applied retroactively in this case; and (4) *Oil Capitol* was wrongly decided. These issues were considered and rejected by the Board in its September 25, 2008 Order denying the parties' appeals. Accordingly, the Charging Parties have not demonstrated extraordinary circumstances warranting reconsideration under Section 102.48(d)(1) of the Board's Rules and Regulations.

IT IS ORDERED, therefore, that the Charging Parties' motion for reconsideration is denied.<sup>6</sup>

<sup>&</sup>lt;sup>1</sup> Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board's powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Chairman Liebman and Member Schaumber constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act.

<sup>&</sup>lt;sup>2</sup> Fluor Daniel, Inc., 353 NLRB 133 (2008).

<sup>&</sup>lt;sup>3</sup> 349 NLRB 1348 (2007).

<sup>&</sup>lt;sup>4</sup> Fluor Daniel, supra, 353 NLRB 133 (2008).

<sup>&</sup>lt;sup>5</sup> The Charging Parties argue that the Board lacked a quorum on September 25, 2008, when it issued its Decision and Order Remanding Proceeding. However, this argument is without merit for the reasons stated above in footnote one.

To the extent the Charging Parties present expanded arguments in support of the position that *Oil Capitol* was wrongly decided, we find that these arguments do not warrant reconsideration of the Board's September 25 Order.

<sup>&</sup>lt;sup>16</sup> For the reasons stated in fns. 5 and 8 of the Board's September 25, 2008 Order, Chairman Liebman concurs in the denial of the Charging Parties' motion for reconsideration.